

ORIGINAL

MORRISON & FOERSTER LLP

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
DENVER

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

NEW YORK
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO

EX PARTE OR LATE FILED

ORIGINAL

December 23, 1999

Writer's Direct Contact
(202) 887-1510
critt@mofo.com

By Messenger

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W. , Room TW-A325
Washington, D.C. 20554

RECEIVED

DEC 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
ET Docket 95-18; IB Docket 99-81

Dear Ms. Salas:

By this letter ICO Global Communications ("ICO") submits supplemental information in the above-captioned proceedings to bring to the Commission's attention a recent decision by the Department of Industry Canada ("Industry Canada" or "the Department") that adopts a workable transition plan for fixed incumbents operating in the 1990-2025 MHz and 2160-2200 MHz frequency bands in order to accommodate new mobile satellite service ("MSS") entrants.

In October, 1999, Industry Canada issued a policy paper making spectrum utilization changes in the 1-3 GHz frequency range.¹ The new policy culminates a consultative process that began in 1997 with a goal of providing new opportunities for the use of the radio spectrum in the 1-20 GHz frequency range. Of relevance to the above-captioned proceeding is the transition policy to facilitate the introduction of MSS in the bands 1990-2025 and 2160-2200 MHz.

Before specifying specific policies applicable to the introduction of the MSS, Industry Canada articulated general principles relative to the allocation of spectrum

¹ The full text of the Department's policy can be found at "<http://strategis.ic.gc.ca/spectrum>."

No. of Copies rec'd 0
List ABCDE

MORRISON & FOERSTER LLP

Ms. Magalie Roman Salas
December 23, 1999
Page Two

resources and the displacement of radio systems. Industry Canada reaffirmed its policy that radio licenses do not confer ownership or a continued right to a particular radio frequency and that reasonable notice will be provided to inform incumbent spectrum users of any conditions or circumstances which could result in the displacement of their services or systems to other bands. Significantly, Industry Canada also reaffirmed that there is no liability or responsibility or intent by Industry Canada to financially compensate spectrum users being displaced. Furthermore, the Industry Canada stated that it has not been the practice of Industry Canada to ask new radio users to compensate incumbent users being displaced while acknowledging that private arrangements could be made on a voluntary basis. All of these policy statements are reinforced by the Radiocommunication Regulations which provide that the assignment of a radio frequency does not confer a monopoly on the use of the frequency or any right of continued tenure.

With the benefit of these policy statements and reaffirmations, Industry Canada established transition provisions for MSS in the bands 1990-2025 and 2160-2200 MHz including the following:

- Formal notification will be given by Industry Canada for displacement of incumbents to make spectrum available on a Canada-wide basis based upon sufficient evidence from an approved MSS service provider that such displacements are critical in meeting their service requirements;
- The earliest mandatory date for incumbents that may be subject to displacement will be January 1, 2003 with a minimum notification period of two years being afforded to them. **Later displacement is achieved at the sole expense of the incumbent.** Earlier displacement is achieved through mutually acceptable arrangements between MSS operators and incumbents; and
- Industry Canada will retain oversight of the relocation process and will assist, where necessary, affected incumbents in identifying new replacement frequency assignments.

Industry Canada has attempted to achieve a balance between the needs of licensees intending to provide MSS in Canada and the operators of incumbents presently occupying the frequency assignments desired by MSS operators.

As a consequence of its new relocation policy, if by December 31, 2000 Industry Canada were to license the provision of MSS and issue a two-year notice to incumbents to vacate their spectrum, that MSS provider would not be obligated to pay for any

MORRISON & FOERSTER LLP

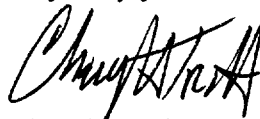
Ms. Magalie Roman Salas
December 23, 1999
Page Three

relocations after January 1, 2003, and incumbents would have a strong incentive to negotiate reasonable terms on which to relocate well before January 1, 2003.

Industry Canada's approach succeeds in equitably balancing different parties' interests by applying time-honored principles of spectrum management to the new global satellite systems without sacrificing the principle that spectrum licenses do not convey property rights.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an original and one copy of this letter are provided to the Secretary for inclusion in the record in the above-captioned proceeding.

Very truly yours,



Cheryl A. Tritt
Counsel to ICO Global Communications

Francis D.R. Coleman
Director, Regulatory Affairs - N.A.
ICO Global Communications
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

cc: Ari Fitzgerald
Marc Schneider
Peter Tenhula
Adam Krinsky
Bryan Tramont
Dale Hatfield
Julius Knapp
Sean White
Geraldine Matise
Donald Abelson
Tom Tycz
Linda Haller
Karl Kensinger
Christopher Murphy
Howard Griboff
Alex Roytblat